



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,260	12/03/2003	Thomas W. Parker	3984500-145102	4922
23570	7590	02/22/2006		
PORTER WRIGHT MORRIS & ARTHUR, LLP INTELLECTUAL PROPERTY GROUP 41 SOUTH HIGH STREET 28TH FLOOR COLUMBUS, OH 43215			EXAMINER SHAKERI, HADI	
			ART UNIT	PAPER NUMBER
			3723	

DATE MAILED: 02/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/727,260

Applicant(s)

PARKER ET AL.

Examiner

Hadi Shakeri

Art Unit

3723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

Art Unit: 3723

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

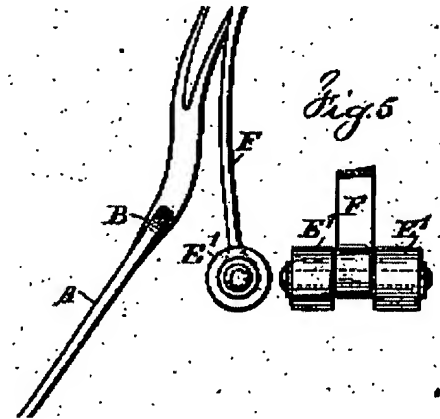
1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 8, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Hopper (56,391).

Hopper et al. discloses all of the limitations of claim 1, i.e., a spade comprising a base (accommodating the handle) a blade (A) forwardly extending from the base having a planar portion forming a leading edge, an elongated handle (C) rearwardly extending from the base, a pair of wheels (E') attached to the base rearward of the blade being spaced apart and having a common axis. Wherein the planar portion of the blade is tangent to a surface of the wheel.



Regarding claims 3, 8, and 9; Hopper meets the limitations, e.g., wheels spaded narrower than the blade; axles being rigidly secured to the base; rear grip and a fore grip along the shaft.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

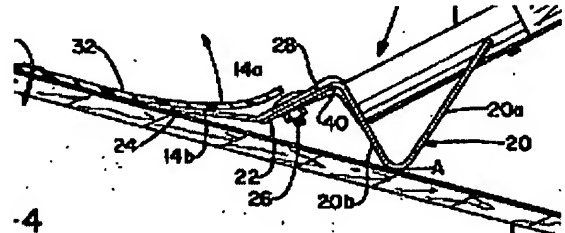
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 3723

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4, 8, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crookston (4,809,436) in view of Hopper.

Crookston meets all of the limitations of claim 1, except for a pair of wheels. Hopper teaches the use of wheels as the fulcrum points.

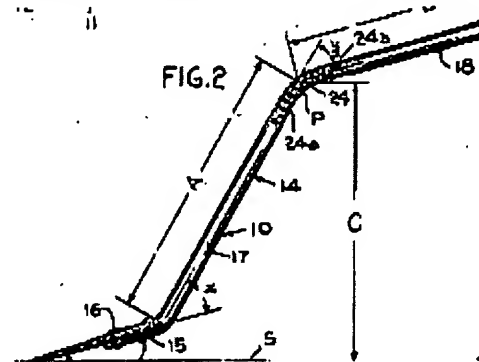


It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the invention of Crookston with the fulcrum points as taught by Hopper to improve the operation, e.g., smooth movement.

Regarding claims 2-4, 8 and 9, Crookston as modified by Hopper meets the limitations.

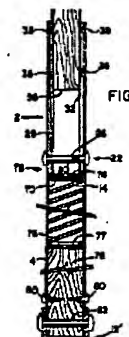
5. Claims 5-7, 13, 16, 17, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crookston in view of Hopper as applied to claim 1 above, and further in view of Zeisig (3,222,699).

Crookston meets all of the limitations of the above claims, except for the shape of the handle, an obvious modification in view of Zeisig as indicated in the previous office action for ergonomic handles.



6. Claims 10, 14-16, 20-25, 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crookston in view of Hopper as applied to claim 1 and Crookston in view of Hopper and Zeisig as applied to claim 13 above, and further in view of Jacob et al.

Prior art meets all of the limitations of the above claims, except for the rear

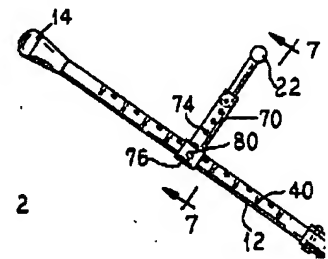


Art Unit: 3723

grip to have a passage slidably receiving a rear end of the shaft and the resilient material there between, an obvious modification in view of Jacobs et al. as indicated above and in pervious office action. Regarding claims 15, 16 and 37, the sidebars forming the rear grip, each makes an included angle of less than 90 degrees relative to the central axis.

7. Claims 11, 12, 18, 19, 26-34 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crookston in view of Hopper as applied to claim 1 and Crookston in view of Hopper and Zeisig as applied to claim 13 above, and Crookston in view of Hopper, Zeisig and Jacob et al. as applied to claim 20 above further in view of Adams.

Prior art meets all of the limitations of the above claims, except for a fore grip located along the shaft and axially adjustable, an obvious modification in view of Adams as indicated above and in pervious office action. Regarding claims 28-34 and 38, prior art as modified by Adams meets the limitations.



### **Conclusion**

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 3723

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Response to Arguments***

9. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hadi Shakeri whose telephone number is 571-272-4495. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail, III can be reached on 571-272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Hadi Shakeri  
Primary Examiner  
Art Unit 3723

hs  
February 20, 2006